

State of California



Fair Political Practices Commission

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April 17, 1985

Honorable Marian Bergeson
Senator, District 37
140 Newport Center Dr., Suite 120
Newport Beach, CA 92660

FPFC Advice Letter No. 85-083

Dear Senator Bergeson:

Thank you for your letter of March 26, 1985, in which you asked about the reporting requirements, if any, you would incur as a result of accepting donated air transportation.

Government Code Section 82028^{1/} defines a gift as, "...any payment to the extent that consideration of equal or greater value is not received..."

"Payment" is defined in Section 82044 to include a provision of services or anything else of value, whether tangible or intangible.

Since your transportation was not provided by a state, local or federal government agency, but by a corporation or individual, the fair market value of the donated transportation is a gift to you and reportable on your Statement of Economic Interests. Section 87302(b) requires disclosure of the source, date and amount of gifts aggregating \$50 or more.

The fact that you could have received reimbursement from the state for your transportation does not change the above conclusion. The Commission has ruled that, under specific circumstances, not applicable in your case, provision of a public official's transportation and other expenses by a private entity may be considered a gift to the state rather than to the public official. The Commission has set forth in an opinion issued to Peter G. Stone, 3 FPFC Opinions 52 (No. 77-003, June 9, 1977), the following four minimum criteria for determining when a gift is made to the state or local government agency rather than to the official:

^{1/} All statutory references are to the Government Code unless otherwise noted.

Honorable Marian Bergeson
April 17, 1985
Page 2

1. The donor intended to donate the gift to the public agency and not to the official;
2. The public agency exercises substantial control over use of the gift;
3. The donor has not limited use of the gift to specified or high-level employees, but rather has made it generally available to the public agency's personnel in connection with agency business without regard to official status; and
4. The making and use of the gift was formalized in a resolution of the public agency (a written public record will suffice for administrative agencies not possessing the legislative power of adopting resolutions) which embodies the standards set forth above.

To determine the value of the gift, the fair market value of the private air transportation is either the commercial air rate for a similar trip or the charter rate for such a trip divided by the number of passengers on the trip.

Also, for your information, the Commission staff is currently drafting new regulations regarding gifts which could modify the rules for provision of travel to public officials. When the regulations are noticed we will send you a copy.

I hope this information has helped answer your questions regarding donated air transportation. If you have any questions, please do not hesitate to contact me.

Sincerely



Mary Ann Kvasager
Political Reform Consultant

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MARIAN BERGESON
SENATOR, THIRTY-SEVENTH DISTRICT

MINORITY WHIP

March 26, 1985

John Keplinger, Executive Director
Fair Political Practices Commission
Post Office Box 807
Sacramento, California 95804

Re: ~~Reporting requirements; donated air travel to legislator for fulfilling~~
legislative requirements

Dear Mr. Keplinger:

This letter requests your assistance in determining the appropriate reporting requirements, if any, for private air travel which is donated to a legislator in order to accommodate his obligations to travel to various portions of his district.

Specifically, if an individual or a corporation provides a plane and pilot to fly me to the Imperial County portion of my Senate District, without any charge to the state or to me, is such assistance reportable, and, if so, in what way?

Thank you for your anticipated assistance in responding to this inquiry.

Very Truly Yours,

A handwritten signature in cursive script that reads "Marian Bergeson".

MARIAN BERGESON
Senator, 37th District

MB/jb